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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/472,876	06/07/1995	ARTURO J. GARCIA	TRD-001-IA	1080

29673 7590 05/05/2004

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EXAMINER
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MEI, XU

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 05/05/2004

58

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

08/472,876

**Applicant(s)**

GARCIA ET AL.

**Examiner**

Xu Mei

**Art Unit**

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,5,9,14,15,24,28,31,33-35,37,38,40 and 43-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 5, 9, 14, 15, 24, 28, 31, 33-35, 37, 38, 40, 43-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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#### DETAILED ACTION

1. This communication is responsive to the applicant's Response to Decision on Appeal dated 8/25/2003.

2. Claims 2, 5, 9, 14, 15, 24, 28, 31, 33-35, 37, 38, 40 and 43-53 (all the remaining claims) are rejected by the BPAI under 35 U.S.C. 112, first and second paragraphs as in Paper No. 51.

3. Applicant's arguments filed 10/31/2003 have been fully considered but they are not persuasive.

The applicant's argument regarding "the reference frequency" is considered, however, it's deemed not persuasive since the claim does not expressly define the term "reference frequency", or there is any guidance in the disclosure for ascertaining what the "reference frequency" may be. Applicant's argued that the "reference frequency" is simply a term used to refer to the frequency at which the harmonic enhancement begins for the high frequency enhancement and where low frequency enhancement ends (last paragraph on page 8 of the Remark). However, the term "reference frequency" is not being specifically defined in the claim or being provided with explanation in the disclosure to explain what the "reference frequency" may be.

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The applicant's argument regarding "the enhanced audio signal" is considered, however, it's deemed not persuasive since the term "the enhanced audio signal" as explained by the applicant "may involve a degree of human subjective" (page 9, 3<sup>rd</sup> paragraph of the Remark) and this clearly implies that human decisions involve and leading the claim fails to properly set out the metes and bounds under instant claimed language. Applicant also argued the term "perceptively improved" that "such a perceptible improvement does not involve a significant amount of human subjectivity" (page 9, last paragraph of the Remark). This is deemed not persuasive. The "perceptively improved" harmonic quality and sound source separation is also clearly involves human decision to decide whether or not the output sound is being "perceptively improved". This also leading the claim fails to properly set out the metes and bounds under instant claimed language.

As these are the totality of arguments presented, and they have been found unpersuasive, the existing rejection by the BPAI under 35 U.S.C. 112, first and second paragraphs is deemed appropriate.

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4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xu Mei whose telephone number is 703-308-6610. The examiner can normally be reached on Monday-Friday (9:30-6:00), alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W Isen can be reached on 703-305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Xu Mei  
Primary Examiner  
Art Unit 2644  
04/21/2004